

IN T HE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 3881 OF 2007

Rizwan Hazrat Shaikh

Petitioner

Vs.

The State of Maharashtra & Ors.

Respondents

Mr. Ashish Gaikwad, Advocate for the petitioner.

Ms. V. Mhaisapurkar, AGP for the Respondent No.1.

Mr. M. S. Lagu, Advocate for the Respondent No.3 & 4.

**CORAM : D. G. KARNIK
AND
A. A. SAYED, JJ.
[VACATION COURT]**

DATE : MAY 15, 2007.

P.C.

1. Heard the learned Counsel for the Petitioner and
the Respondent Nos. 3 and 4.

2. This Writ Petition is directed against the order
dated 11th May 2007, passed by the Returning Officer,
rejecting the nomination paper of the Petitioner, on the
ground that the petitioner had not signed the
declaration required to be made by him that he was not
disqualified and that he was not a contractor of the
Municipal Corporation and that he was not a defaulter in
payment of any dues of the Corporation. It is not
disputed that this declaration was mandatory as per the

applicable Rules. We are therefore of the view that Returning Officer was right in rejecting the nomination of the petitioner.

3. Even otherwise Writ Petition cannot be entertained. Section 16 of the Bombay Provincial Municipal Corporation Act, 1949 provides for a remedy is by way of election petition in case of improper rejection of a nomination paper. The petitioner must avail of that remedy, and a Writ Petition against improper rejection of nomination papers cannot be entertained. We are fortified in our view by the decision of the Supreme Court in **N. P. Ponnuswami Vs. The Returning Officer, Namakkal Constituency, A.I.R. (39) 1952 Supreme Court 64**, wherein the Court has observed that :

"We are informed that besides the Madras High Court, seven other State High Courts have held that they have no jurisdiction under Art. 226 of the Constitution to entertain petitions regarding improper rejection of nomination papers. This view is in my opinion correct and must be affirmed. The appeal must, therefore, fail and is dismissed."

4. We therefore see no reason to entertain the petition. Writ Petition is accordingly dismissed summarily.

[A. A. SAYED, J.]

[D. G. KARNIK, J.]